

404(b)(1) Guidelines Issues		Past Elevations/Vetos	
Key Issue		Quote	Source
Avoidance - Project Purpose - Undue Deference to Applicant's Wishes		"In the instant case, the NOD administrative record gives the appearance of having given too much deference to the way the applicant chose to define the purpose of his project; this led to characterization of project purpose in such a way as to preclude the existence of practicable alternatives.....The Corps will evaluate the applicant's evidence and determine, independently of the applicant's wishes, whether all the requirements of the Guidelines have been satisfied.....Although the Corps may try to view a project's basic purpose from the applicant's perspective, that cannot change the Guidelines' mandate to use every project's basic purpose for the Guidelines' practicability review."	Plantation Landing 404(q) Elevation Guidance Memo April 21, 1989
		"While the Corps should consider the applicant's views and information regarding the project purpose and existence of practicable alternatives, this must be undertaken without undue deference to the applicant's wishes....."	Hartz Mountain 404(q) Elevation Guidance Memo August 17, 1989
		"The Guidelines alternatives analysis must use the 'basic project purpose' for each Section 404 permit application in a manner which seems reasonable and equitable for that particular case. It is recognized that this particular case may be unusual, because it involves unique issues of zoning and land use planning by the HMDC and the apparent scarcity of undeveloped land in the Region 1 area. However, federal concerns over the environment, health and/or safety will often result in decisions that are inconsistent with local land use approvals. In this respect, the Corps should not give undue deference to HMDC or any other zoning body."	Hartz Mountain 404(q) Elevation Guidance Memo August 17, 1989
		"At the request of the District, Hartz conducted a search for potential alternative sites in Region 1...Each site was evaluated by Hartz's consultant.....based on a set of criteria developed by Hartz.....While this approach may be an acceptable method for evaluating alternative sites, we are concerned that some of the criteria were biased to the extent that only sites that meet the applicant's purpose were considered. For example, alternative sites less than 50 acres were not considered practicable because they would not facilitate a 3,301 unit development and therefore 'achieve the applicant's stated project goals'....In this case the District's administrative record gives the appearance of having given too much deference to the applicant's narrowly defined project purpose. This may have very well resulted in the exclusion of otherwise practicable alternatives."	Hartz Mountain 404(q) Elevation Guidance Memo August 17, 1989

	"While the Corps needs to consider the applicant's views and information regarding the project purpose and existence of practicable alternatives, this must be undertaken without undue deference to the applicant's wishes. "	Old Cutler Bay 404(q) Elevation Guidance Memo September 13, 1990
	"As indicated in the guidance provided for Hartz Mountain, the District should determine the minimum feasible size, circumstances, etc., which characterize a viable project. As with any Section 404 permit decision, alternatives must be practicable to the applicant. However, in weighing and balancing the criteria, care must be taken to ensure that an individual criterion, or combination of criteria , does not result in undue deference to the applicant's wishes."	Klatt Bog 404(q) Elevation Guidance Memo June 27, 1994
Avoidance - Project Purpose - Relationship to Alternatives Analysis (applicant's project proposal too specific or narrowly defined)	"While it appears that the District made a conscious effort to view the project from a more basic purpose perspective, this was not the approach taken by Hartz in evaluating potential alternative sites....This approach seriously flaws the validity of the alternatives analysis and is inconsistent with the Guidelines. Limiting project sites to those that can facilitate a 3,301 unit development may preclude the evaluation of otherwise practicable alternatives. Acceptance of this very restrictive alternatives analysis negates all attempts to otherwise more generically define basic project purpose."	Hartz Mountain 404(q) Elevation Guidance Memo August 17, 1989
	"In this case, as in both the Plantation Landing and Hartz Mountain cases, the Corps district defined a project purpose that is too specific to the applicant's proposal.....We are concerned that the application of the overly restrictive definition of project purpose could have resulted in an incomplete analysis of alternative sites. Also, in this instance, the consideration of onsite alternatives could have been limited by the project purpose statement....The basic project purpose can be neither so broadly defined nor alternatively so narrowly defined so as [to] render the alternative analysis meaningless or impracticable. In both cases this would subvert the intent of the Guidelines.....It is only when the 'basic project purpose' is reasonably defined that the alternatives analysis required by the Guidelines can be usefully undertaken by the applicant and evaluated by the Corps.....The alternatives analysis required under the Guidelines relies on a reasonably defined 'project purpose' (See 40CFR 230.10(a)(1) and (a)(3)), and requires substantive evaluations and judgement on the part of the Corps. Finally, the project purpose should be concisely stated in one or two sentences."	Old Cutler Bay 404(q) Elevation Guidance Memo September 13, 1990
	"The permit evaluation must be made based on a single, concise statement of project purpose determined by the Corps to be appropriate. Specifically naming the Newcoal site in the project purpose statement is too specific to Andalex's proposal. Furthermore, referencing a 10 mile distance from Andalex's coal processing facility as a practicable limit for searching for alternative mining sites may also be too specific."	Andalex 404(q) Elevation Guidance Memo October 2, 1991